

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JASON ROMAN,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-4763
	:	
	:	
CITY OF READING, and	:	
READING POLICE DEPARTMENT,	:	
	:	JURY TRIAL DEMANDED
Defendants.	:	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, City of Reading and Reading Police Department, hereby answer Plaintiff's Complaint as follows, denying each and every averment except as expressly admitted below:

PARTIES

1. It is admitted only that plaintiff is an adult individual residing in Lehigh County, Pennsylvania. By way of further response, upon information and belief, plaintiff's current mailing address is 911 Varnsdale Road, Allentown, PA 18103.

2. Admitted.

3. Admitted.

JURISDICTION

4-5. It is admitted only that the Court has jurisdiction to hear the purported federal claims against the Defendants. The remaining averments are denied.

FACTUAL BACKGROUND

6. It is admitted only that plaintiff reported to the Reading Police Department on June 14, 2002 at approximately 1:30 a.m. that he was traveling on Franklin Streets, between 8th and 9th Streets, in the City of Reading when he believed that his vehicle was struck by two bullets.

See Reading Police Department Crime Investigation Report dated June 14, 2002, attached as Exhibit A. The remaining averments in paragraph 6 are denied.

7. It is admitted only that Franklin Street is a public street. It is denied that Reading “controls” or “supervises” the street.

8-10. Denied.

11. It is admitted only that plaintiff reported to the Reading Police Department on June 14, 2002 at approximately 1:30 a.m. that bullets struck his car. The remaining averments in paragraph 11 are denied.

12-16. It is admitted only that Reading Police Officers responded to Plaintiff’s request for police assistance and conducted an investigation of the reported incident. The remaining averments of paragraph 12-16 are denied.

12-18. Denied.

LIABILITY

19-21. Denied.

22. It is admitted only that Defendants are familiar with the City. The remaining averments of paragraph 22 are denied.

23-41. Denied.

42-43. The statements contained in paragraphs 42 and 43 are not averments to which a response is required.

AFFIRMATIVE DEFENSES

Defendants reserve the right to assert any and all applicable defenses to Plaintiff’s claims. Defendants have not yet obtained discovery from Plaintiff or from third parties in connection with this action, and Defendants reserve the right to amend or otherwise supplement this

pleading on that basis. Without limiting the generality of the foregoing and without regard to whether the defenses set forth below are affirmative defenses within the meaning of Fed. R. Civ. P. 8(c), and without conceding that any such defense must be set forth in their Answer, Defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to set forth a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of harm by his own conduct.

THIRD AFFIRMATIVE DEFENSE

Any injury or damage sustained by plaintiff was a direct and proximate result of Plaintiff's conduct.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, or otherwise subject to reduction by reason of plaintiff's contributory negligence.

FIFTH AFFIRMATIVE DEFENSE

No act or failure to act on the part of any of the Defendants violated any of plaintiff's constitutional rights.

SIXTH AFFIRMATIVE DEFENSE

Defendants are immune from all or part of the claims set forth in Plaintiff's Complaint.

SEVENTH AFFIRMATIVE DEFENSE

At all times material hereto, Plaintiff was afforded all of the rights, privileges and immunities granted pursuant to the Constitution and laws of the United States and the Commonwealth of Pennsylvania .

EIGHTH AFFIRMATIVE DEFENSE

At no time material hereto did Defendants adopt or permit, either formally or informally, a policy, custom or practice which tolerated or permitted the violation of the civil rights of any individual, including Plaintiff.

NINTH AFFIRMATIVE DEFENSE

At all times material hereto, the policies and procedures of Defendants have been reasonable and appropriate and have insured the protection of all rights, privileges and immunity of the public, including plaintiff.

TENTH AFFIRMATIVE DEFENSE

At all times material hereto, the actions of Defendants were appropriate under the circumstances and based upon a reasonable good-faith belief that they were justified under the law.

ELEVENTH AFFIRMATIVE DEFENSE

At no time material hereto did Defendants act in bad faith or in a willful, wanton, outrageous and/or malicious manner.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Pennsylvania Political Subdivision Tort Claims Act 42 Pa. C.S.A. § 8501 et seq.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff did not suffer any injury or damages as a result of any acts or omissions by Defendants.

WHEREFORE, Defendants respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys' fees, including those available under 42 U.S.C. §1988, and any further relief deemed appropriate by this Court.

Respectfully submitted,

Dated: May 12, 2003

David J. MacMain (Identification No. 59320)
Danielle M. White (Identification No. 87772)

Montgomery, McCracken,
Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
(215) 772-1500

**Attorneys for Defendants
City of Reading and Reading Police Department**

CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint was served, via certified mail, postage pre-paid, on plaintiff addressed as follows:

Jason Roman
911 Varnsdale Road
Allentown, PA 18103

Dated: May 12, 2003

Danielle M. White